

*Nez Perce*

## TRIBAL EXECUTIVE COMMITTEE

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March 6, 2001

Brigadier General Carl A. Strock  
U.S. Army Corps of Engineers  
P.O. Box 2870  
Portland, OR 97208-2870

**Re: Compliance with the Clean Water Act at the Four Lower Snake River Dams as Required by National Wildlife Federation et al and Nez Perce Tribe v. U.S. Army Corps of Engineers et al.**

Dear General Strock:

Recently, the federal court confirmed that the Corps of Engineers is legally obligated to comply with the Clean Water Act's federally-approved water quality standards and that, to date, the Corps has failed to comply with this legal duty. National Wildlife Federation et al. and Nez Perce Tribe v. U.S. Army Corps of Engineers et al., No. 99-442 (D.Or. February 16, 2001).

The court held that "It is not possible to conclude that the Corps complied with its legal obligations under the Clean Water Act when it made the decisions in the 1995 Record of Decision and the 1998 Record of Decision based upon a review of the decisions themselves." Slip op. at 23. The court noted that the Corps could make operational changes to improve water quality:

However, a review of the administrative record convinces the court that the operation of the dams on the lower Snake River has a significant effect on the exceedences of state water quality standards. The administrative record in this case continually refers to operational changes to the Corps' hydropower facilities intended to address violations of water quality standards at the lower Snake River dams.


Slip op. at 27. The Court ordered the Corps to issue a new decision within 60 days to comply with the Clean Water Act's legal requirements.

We expect that the Corps will identify how it will modify its operations and implement measures

to achieve water quality standards for temperature and dissolved gas. Plans and processes to develop a plan to "address" water quality standards at some unspecified time in the future through some indeterminate means will not suffice.

We also expect the Corps to finally quantify and disclose the costs of compliance with the Clean Water Act at the four lower Snake River dams. As the Nez Perce Tribe, the United States Environmental Protection Agency, and many others have noted, the Corps must disclose the full costs of complying with the Clean Water Act and other federal laws so the Nation may fairly analyze the options for future configuration of these dams. We believe that this analysis will confirm that breaching these dams will be the most cost-effective measure available to the Corps to comply with the Clean Water Act, the Endangered Species Act and other federal laws.

Sincerely,

  
Samuel N. Penney,  
Chairman